

### Supplemental North Carolina Comment

The North Carolina drafters have become aware of controversy involving the correctness and application of the last paragraph of Comment 8 of the Official Comment to this section, to the effect that a transfer by a person in a state that does not recognize self-settled spendthrift trusts to such a trust created under the laws of a state that does recognize such trusts would be voidable in itself. The drafters take no position on this issue but note the following two points:

- (1) Both the Official Comments and the North Carolina Comments to this Act are printed in the General Statutes as annotations. *See* § 4 of Session Law 2015-23 (authorizing the Revisor of Statutes to print the comments "as annotations"). Furthermore, the commentaries to the statutes, even official comments, are not law. Official and other drafters comments are used by our courts as persuasive precedent or to show legislative intent, but they are not binding. *See, e.g., Parsons v. Jefferson-Pilot Corp.*, 333 N.C. 420, 425, 426 S.E.2d 685, 689 (1993) ("[N]either the Official Comment nor the North Carolina Commentary to N.C.G.S. 55-16-02 were enacted into law and ... are not controlling [but] we accord them some weight in our efforts to determine the intent of our legislature"); *Electric Supply Co. v. Swain Elec. Co., Inc.*, 328 N.C. 651, 657, 403 S.E.2d 291, 295 (1991) ("[T]he commentaries printed with the North Carolina General Statutes, which were not enacted into law by the General Assembly, are not treated as binding authority by this Court"); *State v. Williams*, 315 N.C. 310, 327, 338 S.E.2d 75, 85 (1986) ("We consider the official commentary [to G.S. 15A-1235] to be merely persuasive authority ... and ... therefore not binding on us"); *see also Conley's Creek Limited Partnership v. Smokey Mountain Country Club Property Owners Association, Inc.*, \_\_\_\_

N.C. App. \_\_\_, 805 S.E.2d 147, 151 (2017); *Miller v. First Bank*, 206 N.C. App. 166, 171, 696 S.E.2d 824, 827 (2010); *Rentenbach Constructors, Inc. v. CM Partnership*, 181 N.C. App. 268, 271, 639 S.E.2d 16, 18 (2007); *State v. Evans*, 145 N.C. App. 324, 330, 550 S.E.2d 853, 857-58 (2001).

- (2) No North Carolina appellate case directly on point has been reported to the drafters as of [date of publication?].